



THE CITY OF NEW YORK
LAW DEPARTMENT

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MEMO ENDORSED

September 12, 2007

VIA FACSIMILE

The Honorable James C. Francis IV
United States Magistrate Judge, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1960
New York, New York 10007-1312

USDC SDNY
DOCUMENT
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Re: Banno v. City of New York, et al., 06 Civ. 2270 (KMK)(JCF)

Dear Judge Francis:

I write to request an order compelling plaintiff Yusuke Banno to respond, accurately and completely, to defendants' discovery requests. Defendants have made attempts to resolve this matter with Mr. Banno's counsel, Jeffrey Fogel, but such efforts have been unsuccessful.

On May 15, 2006, defendants served their First Set of Interrogatories and Requests for Production of Documents to Mr. Banno. Mr. Banno served his responses on November 1, 2006. In response to defendants' Interrogatory 11, Mr. Banno stated that he was arrested on four occasions prior to the RNC. See Exhibit A. However, Mr. Banno's arrest in Washington, D.C. could not be verified by their local courts. Defendants have asked Mr. Fogel to confirm with his client whether he was arrested in Washington D.C. or in one of the other nearby jurisdictions. Mr. Fogel has refused to do so. See Exhibit B. In addition, Mr. Banno has not provided defendants with any releases, as called for by Document Request 1, in order for defendants to gather his arrest records from the appropriate jurisdictions in advance of his deposition.

The Court has repeatedly ordered plaintiffs to produce to defendants all information and records, including releases, concerning plaintiffs' arrests. Schiller v. City of New York, 04 Civ. 7922 (December 7, 2006 Order); Abdell v. City of New York, 05 Civ. 8453 (December 21, 2006 Order); Eastwood v. City of New York, 05 Civ. 9483 (February 26, 2007 Order); and Bastidas v. City of New York, 05 Civ. 7670 (July 6, 2007 Order). Defendants will suffer prejudice without

the benefit of receiving full and complete arrest information and records concerning Mr. Banno prior to his deposition.

In addition, defendants request that the Court order Mr. Banno to provide the requested information concerning his educational history. Defendants' Interrogatory 14 sought such information, and Document Request 22 sought releases for such records, but Mr. Banno has objected to providing any of this information. Mr. Banno seeks damages because, according to his response to defendants' Interrogatory 5, "*plaintiff also lost a semester in school.*" Defendants, therefore, are entitled to investigate information such as, whether he was enrolled for that semester, whether he attended his classes, any statements concerning reasons for his alleged leave (or omissions thereof), whether any accommodations were requested by him or offered by his school, his anticipated school semester schedule, and whether he was receiving any financial aid. Any of these facts could affect the amount of Mr. Banno's damages and, therefore are discoverable. Defendants are also entitled to investigate whether there are any witnesses at his university to, among other things, the acts with which he was charged in New York. Defendants respectfully request, therefore, that the Court order Mr. Banno to respond fully and accurately to Interrogatory 14 and Document Request 22.

For the forgoing reasons, defendants respectfully request that Your Honor order Mr. Banno to (1) confirm the appropriate jurisdiction of his arrest, whether in Washington, D.C. or one of the nearby jurisdictions, and to provide any other information that may assist defendants to collect documentation from that jurisdiction; (2) provide defendants with releases in order to gather his arrest records from each of the appropriate jurisdictions; (3) provide complete responses to Interrogatory 14 and Document Request 22, including releases; and (4) provide all the requested information within (10) days of the Court's order on this application, so that defendants have time to collect the records from third parties before Mr. Banno's deposition.

Respectfully submitted,



Raju Sundaran (RS 8011)

10/5/07

cc: Jeffrey Fogel, Esq. (via email) Application granted in part as follows. Plaintiff has confirmed that his Nov. 1, 2006 arrest took place in [REDACTED] Washington, DC. He shall provide releases for information about each of his arrests. He shall also provide a release for his educational records for the institution he was attending at the time of his RNC arrest. The releases shall be provided by Oct. 15, 2007.

SO ORDERED.
James C. Francis IV
USM/T